

REMARKS

The application has been reviewed in view of the Office Action mailed May 19, 2005. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

Claims 2-19 and 21 stand rejected under 35 U.S.C. 102(b) by US Patent No. 5,904,699 to Schwemberger et al. (hereinafter “Schwemberger”). Schwemberger is directed to a surgical trocar including a precock lever 52. The precock lever 52 is manually pivoted by the surgeon to retract a shield 55 to expose the flat blade 51. See Column 7, lines 59-65.

It is respectfully submitted that the present invention is patentably distinguishable from Schwemberger ‘699. For example, Schwemberger fails to teach or suggest the recited “button portion protrudes at least partially through an opening formed in the distally facing end surface of the obturator housing, the button portion being moveable... to a second position wherein the button portion is positioned further within the obturator housing upon engagement with the proximally facing surface of the cannula” as required in independent claim 2. In contrast, the precock lever 52 is pivotally mounted to an upper portion of the obturator handle 51. In addition, the precock lever 52 does not move due to engagement with a surface of the cannula but, rather, is manually activated.

Accordingly. In view of the foregoing, withdrawal of this rejection is respectfully submitted.

Claims 11-13 were rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,931,042 to Holmes et al. (hereinafter “Holmes”). These claims have been canceled by the amendment.

Claims 2-19, and 21 stand rejected under 35 U.S.C. 102(b) in view of US Patent No. 5,387,197 to Smith et al. (hereinafter “Smith”). It is respectfully submitted that the present invention is patentably distinguishable from Smith ‘197. For example, Smith fails to teach or suggest the recited ““button portion protrudes at least partially through an opening formed in the distally facing end surface of the obturator housing, the button portion being moveable... to a second position wherein the button portion is positioned further within the obturator housing upon engagement with the proximally facing surface of the cannula” as recited in independent claim 1. In contrast, the reset button 270 of Smith ‘197 is positioned on the side of the housing. In addition, the reset button 270 is manually activated, i.e., it is not activated through engagement with the cannula housing. Accordingly, withdrawal of this rejection is respectfully requested.

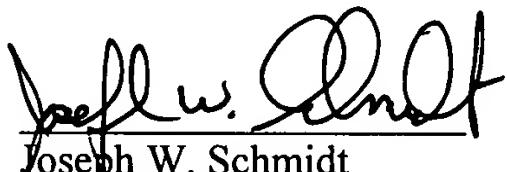
The new claims are also believed to be distinguishable over the art of record. For example, neither Schwemberger, Smith or Holmes individually, or in combination with themselves, or the other disclosures of record, teach or suggest the recited, inter-alia, “release member mounted to the obturator housing and operatively coupled with the latch member, the release member adapted to move the latch member to the release position during positioning of the obturator within the longitudinal opening of the cannula” as required by independent claim 22, or the recited inter-alia, “release member having a release button positioned to engage the cannula housing upon mating of the obturator housing and the cannula housing to thereby displace the release member and cause movement of the latch member to the actuated position whereby, upon application of a proximal directed force to the protective member, the protective member moves toward the second position thereof” as recited in independent claim 37 or the

recited inter-alia, step of “approximating the obturator housing and the cannula housing to move a latch member associated with the obturator assembly from a first position wherein the latch member retains the guard in an advanced position to at least partially enclose the penetrating member to a second position wherein the latch member releases the guard’ as recited in independent claim 43.

Claims 2-10 and 14-19 stand rejected under the judicially created doctrine of obviousness-type double patenting in view of Claims 1-9 of U.S. Patent No. 6,319,266. It is respectfully submitted that a terminal disclaimer will be filed if still required upon indication of the allowability of the claims.

In view of the foregoing amendments and remarks, it is respectfully submitted that none of the references of record, considered individually or in combination, in whole or in part, disclose or suggest the claimed subject matter. Therefore, all claims now pending in this application are believed to be in condition for allowance. Accordingly, early and favorable consideration of this application is respectfully requested. Should the Examiner believe that a telephone or personal interview may facilitate resolution of any remaining matters, he is respectfully requested to contact Applicants' undersigned attorney at the telephone number indicated below.

Respectfully Submitted,



Joseph W. Schmidt
Reg. No. 36,920
Attorney for Applicants

CARTER DeLUCA, FARRELL & SCHMIDT, LLP
445 Broad Hollow Road
Suite 225
Melville, N.Y. 11747
Phone: (631) 501-5706
Fax: (631) 501-3526